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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

RUSSELL GOMEZ DZUL,

Defendant.

Case No. 2:25-CR-00503-MAA

**NOTICE OF MOTION AND
MOTION TO SUPPRESS POST-
ARREST EVIDENCE;
DECLARATION OF HANNAH A.
BOGEN; DECLARATION OF
RUSSELL GOMEZ DZUL;
DECLARATION OF CARINA
ARRIOLA**

Hearing Date: November 5, 2025
Hearing Time: 10:00 AM

TO PLAINTIFF UNITED STATES OF AMERICA AND ITS COUNSEL OF
RECORD:

Please take notice that on November 5, 2025, or as soon thereafter as counsel may be heard, in the courtroom of the Honorable Maria A. Audero, United States Magistrate Judge, Russell Gomez Dzul, by and through his attorneys of record, Deputy Federal Public Defenders James S. Threatt and Hannah A. Bogen, will hereby move the Court for the following:

MOTION

Russell Gomez Dzul moves this Honorable Court for an order suppressing all evidence collected after his unconstitutional arrest on June 7, 2025 (“Motion”). This Motion is made pursuant to the Fourth and Fifth Amendments to the United States Constitution and is based upon the attached Memorandum of Points and Authorities, the declarations of Hannah A. Bogen, Carina Arriola, and Russell Gomez Dzul, all files and records in this case, and such evidence and argument as may be presented at a hearing on this motion.

Counsel met and conferred in good faith on the instant Motion and could not agree to the relief sought.

Respectfully submitted,
CUAUHTEMOC ORTEGA
Federal Public Defender

DATED: October 2, 2025

By /s/ Hannah A. Bogen

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On June 7, 2025, numerous Border Patrol Agents terrorized Los Angeles, conducting roving patrols, chasing and detaining people they “suspected” of illegal immigration.

When chasing one such suspect, three of the agents ran into Mr. Gomez Dzul, a bystander riding his bike in the area.

The agents immediately assumed Mr. Gomez Dzul was undocumented because of his skin color. They chased him down the street in a car and on foot. Then, they cornered him in a driveway where he stood visibly terrified and confused, hiding behind a Jeep SUV.

Without any explanation, two of the agents cuffed Mr. Gomez Dzul, placed him in their car with a third agent, and started driving. The agents questioned him in the car and at two more locations. They never provided Mr. Gomez Dzul with a neutral Spanish interpreter. Instead, the agents rushed him to waive his *Miranda* rights without confirming he understood them, which he did not. The agents asked Mr. Gomez Dzul questions they knew would elicit incriminating responses.

Mr. Gomez Dzul suffered Fourth and Fifth Amendment violations. The agents did not have probable cause to arrest him, but they did anyway. They did not ensure that Mr. Gomez Dzul understood and knowingly, intelligently, and voluntarily waived his *Miranda* rights, but they questioned him anyway. As a remedy for all violations here, the Court should suppress all evidence collected after Mr. Gomez Dzul’s June 7, 2025 arrest.

II. FACTUAL BACKGROUND

A. The Allegations.

Mr. Gomez Dzul is charged with assaulting a federal officer in violation of 18 U.S.C. § 111(a)(1). (ECF 12.) The government alleges that during a stop while he was being transported for questioning, Mr. Gomez Dzul somehow assaulted a border patrol

1 agent. (*Id.*) In truth, at the time of the alleged assault, he was fighting for his life -
2 handcuffed, laying down, and gasping for air as agents choked him in the back of a
3 patrol vehicle.¹

4 **B. The Border Patrol Agents Profiled Mr. Gomez Dzul and Arrested Him**
5 **Without Justification.**

6 On June 7, 2025, numerous Border Patrol Agents (the “Border Agents”)
7 conducted investigations and raids throughout Los Angeles, California. (*See*
8 Declaration of Hannah A. Bogen (“Bogen Decl.”) Ex. A.) While chasing after, and
9 losing, a different person, three Border Agents ran into Mr. Gomez Dzul, a bystander,
10 riding his bicycle. (*Id.* at 0:50-1:52.) Having lost sight of the individual they were
11 originally chasing, the Border Agents focused their attention on Mr. Gomez Dzul, the
12 closest brown-skinned man in the area. (*Id.*)

13 Petrified because he was being chased for no reason, Mr. Gomez Dzul pulled off
14 of his bike and hid behind a parked car. (*Id.* at 1:52-2:23.) The Border Agents
15 immediately pushed him to the ground, cuffed him, placed him in the vehicle, and
16 drove off, without telling Mr. Gomez Dzul he was under arrest, or where they were
17 going. (*Id.* at 2:23-4:40.)

18 **C. The Border Agents Immediately Questioned Mr. Gomez Dzul Without**
19 **Providing Any *Miranda* Warnings.**

20 One of the Border Agents sat next to Mr. Gomez Dzul in the back seat, and two
21 more were in the front. (*Id.*) While in the vehicle, the Border Agents commented on
22 those they are trying to apprehend, likely referring to people they suspected to be
23 undocumented, saying “good job bro...they are all running that way...we got a bunch
24 of em’...don’t let them do that shit to you.” (*Id.* at 4:40-5:26.) Less than a minute after
25 placing Mr. Gomez Dzul in the vehicle, without providing any *Miranda* warnings, the
26

27 ¹ For efficiency and clarity, the facts in this Motion focus primarily on Mr.
28 Gomez Dzul’s arrest and all statements he made. The allegations in this case refer to
the time period before Mr. Gomez Dzul sat for any formally recorded video or audio
interview, and are irrelevant to the Motion. (ECF 12.)

1 Border Agent in the back seat next to him asked if he was in the United States legally.
 2 (*Id.* at 5:26-6:15; *See* Bogen Decl. Ex. D.) Moments later, the Border Agents exited the
 3 car to continue searching for the individual they lost. (*Id.* at 6:15-8:00.) One Border
 4 Agent mentioned he did not want to jump a residential gate because of the “cameras.”
 5 (*Id.* at 7:50-52.)

6 **D. The Border Agents Continued to Violate Mr. Gomez Dzul’s Fifth**
 7 **Amendment Rights.**

8 That afternoon, Border Agents Mendoza and Gonzalez placed Mr. Gomez Dzul
 9 in a room. (*See* Bogen Decl. Ex. B.) Mr. Gomez Dzul’s best language is Spanish, and
 10 no Spanish interpreter was present. (*Id.*) Instead, Border Agent Gonzalez, an interested
 11 and biased party, spoke to Mr. Gomez Dzul in Spanish. He read him his *Miranda* rights
 12 quickly as follows:

- 13 • Border Agent Gonzalez: Do you understand your rights?
- 14 • Mr. Gomez Dzul: No.
- 15 • Border Agent Gonzalez: You don’t understand your rights?
- 16 • Mr. Gomez Dzul: Oh the ones you mentioned? Yes.
- 17 • Border Agent Gonzalez: The ones I just read to you. Mhm.
- 18 • Mr. Gomez Dzul: Yes.
- 19 • Border Agent Gonzalez: OK. Are you willing waiving your rights to talk
- 20 to me?
- 21 • Mr. Gomez Dzul: (Nods no) I don’t understand.
- 22 • Border Agent Gonzalez: Do you want to talk to me right now or not?
- 23 • Mr. Gomez Dzul: Yes.

24 (Bogen Decl. Ex. B at 0:00-1:30; *Id.* Ex. C at pp. 2-3.)

25 Mr. Gomez Dzul then proceeded to speak to the Border Agents, who questioned
 26 him about what happened that day. (*Id.*) The questions they asked were designed to
 27 elicit incriminating statements. (*Id.*) Among other questions, Mr. Gomez Dzul was
 28 asked the following:

- If he was in the United States legally;
- Why he “ran off”;
- If he had immigration documents;
- Which country he was from;
- If he was in the United States illegally;
- Why he was in custody;
- What happened “with the guy who chased after [him]”; and
- If he tried to get out of the patrol car.

(See Bogen Decl. Exs. A-D.)

E. Mr. Gomez Dzul Invoked His Right to Counsel As Soon As He Read and Understood His *Miranda* Rights.

Approximately three hours later, Mr. Gomez Dzul met with Special Agents Steve Yoon, Corbin Phipps, and Jonathan Rodriguez for a second interview. (See Bogen Decl. Ex. E.) After receiving his *Miranda* warnings in writing, in Spanish, which were also read to him in Spanish by Special Agent Rodriguez, he immediately declined to speak with the agents and invoked his right to an attorney. (*Id.*)

III. ARGUMENT

A. The Government Bears the Burden at Every Single Step With Respect to the Warrantless Arrest of Mr. Gomez Dzul.

The Fourth Amendment provides that the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. Constitution Amendment IV. The Fourth Amendment incorporates a strong preference for search warrants. *See United States v. Ventresca*, 380 U.S. 102, 106 (1965). Warrantless searches are *per se* unreasonable. *Katz v. United States*, 389 U.S. 347, 357 (1967). While warrantless searches are not absolutely proscribed, the exceptions to the warrant requirement are “jealously and carefully drawn.” *Jones v. United States*, 357 U.S. 493, 499 (1958). The burden is on the government to show the reasonableness of a warrantless arrest. *See, e.g., United States*

1 *v. Carbajal*, 956 F.2d 924, 930 (9th Cir. 1992). If the government cannot satisfy its
2 burden of proving that the warrantless arrest was constitutional, all evidence recovered
3 as a result of the arrest must be suppressed as the “fruit of the poisonous tree.” *Wong*
4 *Sun v. United States*, 371 U.S. 471, 485–86 (1963).

5 Here, the Border Agents did not have a warrant. The law is clear that it is the
6 government’s burden to justify the warrantless arrest in this case. *See, e.g., United*
7 *States v. Huguez-Ibarra*, 954 F.2d 546, 551 (9th Cir. 1992). The defense is not
8 required to present any arguments in anticipation of the government’s potential
9 justifications for a warrantless search and seizure in its initial moving papers. The
10 Ninth Circuit has rejected such reasoning: “[T]he Government appears to be arguing
11 that the defendants must anticipate and rebut any conceivable theory that might have
12 justified the searches [or arrest]. This is not the law. The Government bears the burden
13 in cases of warrantless searches [and arrests], and at no time does it shift to the
14 defendant.” *United States v. Emens*, 649 F.2d 653, 657 n.6 (9th Cir. 1980). Judge
15 Alsup in the Northern District of California summarized the procedure for challenging
16 warrantless searches and seizures as follows:

17 Where the motion challenges a warrantless search or seizure,
18 the burden is on the government to justify the search or to show
19 an exception. That is, once the movant demonstrates that a
20 warrantless search or seizure occurred, the burden shifts to the
21 government to demonstrate a justification or exception, usually
22 via officer declarations.

23 *United States v. Cerna*, No. CR 08-0730-WHA, 2010 WL 5387694, at *1 (N.D. Cal.
24 Dec. 22, 2010).

25 The above applies with equal force to federal immigration officers. “The
26 authority of federal immigration officers to detain and arrest suspected aliens is limited
27 by the strictures of the Fourth Amendment. Specifically, an immigration officer is
28 authorized to ‘briefly detain a person for questioning’ if the officer ‘has a reasonable

1 suspicion, based on specific, articulable facts, that the person ... is an alien illegally in
2 the United States.’ Similarly, an immigration officer is also authorized to arrest a
3 person if the ‘officer has reason to believe that the person to be arrested ... is an alien
4 illegally in the United States,’ a requirement which courts have equated with the
5 constitutional ‘probable cause’ requirement. As such, the lawfulness of a Border Patrol
6 agent's seizure turns on the familiar principles of reasonable suspicion and probable
7 cause: if an agent detains a person for a brief, investigatory stop, the stop must be
8 supported by reasonable suspicion that the person is unlawfully present in the United
9 States, and if an agent arrests a person, the arrest must be supported by probable cause
10 that the person is unlawfully present in the United States.” *Vargas Ramirez v. United*
11 *States*, 93 F. Supp. 3d 1207, 1218–19 (W.D. Wash. 2015) (citing *Zepeda v. U.S. I.N.S.*,
12 753 F.2d 719, 725 (9th Cir.1983); *Tejeda–Mata v. I.N.S.*, 626 F.2d 721, 725 (9th
13 Cir.1980) (citations omitted).

14 **B. The Border Agents Immediately Arrested Mr. Gomez Dzul Without**
15 **Probable Cause.**

16 **1. Mr. Gomez Dzul Was Arrested.**

17 The Ninth Circuit has made clear that where force is used such that the innocent
18 person could reasonably have believed he was not free to go and that he was being
19 taken into custody indefinitely, an arrest has occurred. *See, e.g., United States v.*
20 *Patterson*, 648 F.2d 625, 632–34 (9th Cir. 1981). “When the government makes an
21 arrest without a warrant, as it did in this case, it must demonstrate that it had probable
22 cause for the arrest. An arresting officer...has probable cause to make an arrest when,
23 under the totality of the circumstances known to the arresting officer [], a prudent
24 person would have concluded that there was a fair probability that [the defendant] had
25 committed a crime.” *United States v. Montes*, 103 F.3d 142 (9th Cir. 1996) (citing
26 *United States v. Garza*, 980 F.2d 546, 549 (9th Cir.1992); *United States v. Delgadillo–*
27 *Velasquez*, 856 F.2d 1292, 1295–98 (9th Cir.1988); *also United States v. Arzate–Nunez*,
28 18 F.3d 730, 735 (9th Cir. 1994). “[M]ere suspicion, common rumor, or even strong

1 reason to suspect are not enough.” *Harper v. City of Los Angeles*, 533 F.3d 1010, 1022
2 (9th Cir. 2008) (quoting *United States v. Lopez*, 482 F.3d 1067, 1072 (9th Cir.2007))
3 (internal quotations omitted).

4 Here, multiple Border Agents cornered Mr. Gomez Dzul, immediately threw
5 him to the ground, handcuffed him, and placed him in their car, alone, with three armed
6 Border Agents. (See Bogen Decl. Ex. A.). Under the totality of circumstances, a
7 reasonable person would obviously know that they were not free to leave, especially
8 when handcuffed and being transported to an unknown location. When the officers
9 drove off with Mr. Gomez Dzul, he was under arrest, and they needed probable cause
10 to have him in custody.

11 **2. The Border Agents Lacked Probable Cause.**

12 Mr. Gomez Dzul, a Latino man, was lawfully riding his bicycle, then continued
13 to ride past the Border Agents. When they started chasing him for no reason, he hid
14 behind a parked car because he was petrified. Neither of these factors (skin color or
15 alleged flight) are enough to create reasonable suspicion to stop Mr. Gomez Dzul - let
16 alone probable cause to arrest him. *See Barlow v. Ground*, 943 F.2d 1132, 1135 (9th
17 Cir. 1991) (“To arrest an individual, police need **more than a reasonable suspicion;**
18 they must have probable cause.”).

19 First, Mr. Gomez Dzul’s skin color or suspected ancestry is not enough to create
20 reasonable suspicion. *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975) (holding
21 that there was no reasonable suspicion sufficient to permit a roving patrol to stop a
22 vehicle near the Mexican border and question its occupants regarding their status if
23 based only on Mexican ancestry); *United States v. Montero-Camargo*, 208 F.3d 1122,
24 1129–32 (9th Cir. 2000) (“Hispanic appearance is not, in general, an appropriate
25 [reasonable suspicion] factor...”); *United States v. Rodriguez*, 976 F.2d 592, 595–96
26 (9th Cir.1992) (concluding that a Hispanic man carefully driving an old Ford with a
27 worn suspension who looked in his rear view mirror and swerved slightly while being
28 followed by agents in a marked car-described “too many individuals to create a

1 reasonable suspicion that this particular defendant was engaged in criminal activity”)
2 (citations and quotation marks omitted); *United States v. Brown*, 925 F.3d 1150 (9th
3 Cir. 2019) (“the burden of aggressive and intrusive police action [that] falls
4 disproportionately on African-American, and sometimes Latino, males and observed
5 that ‘as a practical matter neither society nor our enforcement of the laws is yet color-
6 blind...[t]here is little doubt that uneven policing may reasonably affect the reaction of
7 certain individuals- including those who are innocent- to law enforcement.’”) (citation
8 omitted).

9 Second, avoidance of the police, and even flight, standing alone, are not enough
10 to create reasonable suspicion. *Liberal v. Estrada*, 632 F.3d 1064, 1078 (9th Cir. 2011)
11 (“[A]voidance of the police, standing alone, does not give rise to a particularized,
12 reasonable suspicion that a person is committing a crime...when an officer, without
13 reasonable suspicion or probable cause, approaches an individual, the individual has a
14 right to ignore the police and go about his business...”), abrogated on other grounds by
15 *Hampton v. California*, 83 F.4th 754 (9th Cir. 2023); *Illinois v. Wardlow*, 528 U.S. 119,
16 131–33 (2000) (“[I]t is a matter of common knowledge that men who are entirely
17 innocent do sometimes fly from the scene of a crime through fear of being apprehended
18 as the guilty parties, or from an unwillingness to appear as witnesses. Nor is it true as
19 an accepted axiom of criminal law that ‘the wicked flee when no man pursueth, but the
20 righteous are as bold as a lion...[a]mong some citizens, particularly minorities...there is
21 also the possibility that the fleeing person is entirely innocent, but, with or without
22 justification, believes that contact with the police can itself be dangerous, apart from
23 any criminal activity associated with the officer's sudden presence. For such a person,
24 unprovoked flight is neither ‘aberrant’ nor ‘abnormal.’”)

25 The only “bases” the Border Agents had to arrest Mr. Gomez Dzul do not
26 amount to probable cause, and the government cannot show otherwise.
27
28

C. Suppression of All Post-Arrest Evidence is the Remedy Required by the Fourth Amendment.

The exclusionary rule “bars the prosecution from introducing evidence obtained by way of a Fourth Amendment violation.” *Davis v. United States*, 131 S. Ct. 2419, 2423 (2011). The “exclusionary rule also prohibits the introduction of derivative evidence, both tangible and testimonial, that is the product of the primary evidence, or that is otherwise acquired as an indirect result of the unlawful search ...” *Id.* Such derivative or indirectly acquired evidence is often referred to as the “fruit of the poisonous tree.” *Wong Sun v. United States*, 371 U.S. 471, 484 (1963) (internal quotation marks omitted). A reviewing court must consider the extent to which “evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.” *Id.* at 488 (internal citations omitted).

Exclusion of all evidence is the only remedy that comports with the Constitution. Every single interaction between Mr. Gomez Dzul and the Border Agents is tainted by the initial unconstitutional arrest. Any evidence gathered from that point forward—including, but not limited to any statements by Mr. Gomez Dzul—must be suppressed.

D. The Government Bears the Burden of Demonstrating that the Post-Arrest Evidence Should Not Be Suppressed.

The government bears the burden of demonstrating that valid *Miranda* warnings were given, and that they were waived knowingly, intelligently, and voluntarily, before any custodial interrogation occurred.² *United States v. Harrison*, 34 F.3d 886, 890 (9th Cir. 1994); *see also United States v. Mendoza*, 530 U.S. 428, 439-41 (2000) (discussing constitutional underpinnings of *Miranda v. Arizona*, 384 U.S. 436, 444 (1966) and the

² Mr. Gomez Dzul seeks to exclude all post-arrest evidence, including the statements he made in the Border Agents’ vehicle and during his second set of questioning based on the violations of his Fourth Amendment rights. The statements are fruit of the poisonous tree. In this section, he speaks specifically to the suppression of his video-recorded statements, which should also be suppressed due to Fifth Amendment violations.

1 need to safeguard “precious Fifth Amendment rights”); *see also* 18 U.S.C. § 3501. The
2 government also bears the burden of proving that a defendant’s statements were
3 uncoerced and voluntary under 18 U.S.C. § 3501(a) and the Due Process Clause.

4 In *Miranda*, the Supreme Court held that “the prosecution may not use
5 statements, whether exculpatory or inculpatory, stemming from custodial interrogation
6 of the defendant unless it demonstrates the use of procedural safeguards effective to
7 secure the privilege against self-incrimination.” 384 U.S. at 444. The reason for these
8 procedural safeguards is that custodial interrogation generates “inherently compelling
9 pressures which work to undermine the individual’s will to resist and to compel him to
10 speak where he would not otherwise do so freely.” *Id.* at 467.

11 **E. The Border Agents Violated the Fifth Amendment Immediately On the**
12 **Heels of their Unconstitutional Arrest.**

13 **1. Mr. Gomez Dzul was in Custody from the Beginning.**

14 Someone is in custody under *Miranda* if a reasonable person would have
15 believed that they were not free to leave. *United States v. Mendenhall*, 446 U.S. 544,
16 555 (1980); *see also Stanley v. Schriro*, 598 F.3d 612, 628 (9th Cir. 2010). While courts
17 consider the totality of the circumstances in each case to determine whether a person
18 was in custody at the time of the officer’s inquiry, “the ultimate inquiry is simply
19 whether there is a ‘formal arrest or restraint on freedom of movement’ of the degree
20 associated with a formal arrest.” *California v. Beheler*, 463 U.S. 1121, 1125 (1983).

21 Here, when Mr. Gomez Dzul spoke to Border Agents while in the border patrol
22 vehicle, which was video-recorded, he was already in custody. (Bogen Decl. Ex. A.) He
23 had been handcuffed when he was forced into their vehicle, and the footage suggests he
24 remained handcuffed during his custodial interview. (*Id.*; *see also* Bogen Decl. Exs. B,
25 C.) His freedom of movement was also restrained once he was in a room alone with
26 multiple federal officers. Under those circumstances, a reasonable person would not
27 believe they were free to leave, and he was not. *Mendenhall*, 446 U.S. at 555.

1 **2. Mr. Gomez Dzul Was Interrogated.**

2 A person is interrogated by law enforcement if they are subject to express
3 questioning by the police, or to “any words or actions on the part of the police . . . that
4 the police should know are reasonably likely to elicit an incriminating response from
5 the suspect.” *Rhode Island v. Innis*, 446 U.S. 291, 300-01 (1980) (footnote omitted). An
6 officer can “interrogate” a suspect for Miranda purposes without uttering a question.
7 *Id.*; see *United States v. Washington*, 462 F.3d 1124, 1132 (9th Cir. 2006) (explaining
8 the “test is an objective one”).

9 Here, from the very moment Mr. Gomez Dzul was taken into custody, he was
10 asked questions intended to elicit incriminating responses, including but not limited to
11 the following:

- 12 • If he was in the United States legally;
- 13 • Why he “ran off”;
- 14 • If he had immigration documents;
- 15 • Which country he was from;
- 16 • If he was in the United States illegally;
- 17 • Why he was in custody;
- 18 • What happened “with the guy who chased after [him]”; and
- 19 • If he tried to get out of the patrol car.

20 (See Bogen Decl. Exs. A-D.)

21 Mr. Gomez Dzul was interrogated for purposes of the Fifth Amendment.

22 **F. During the First Formal Interrogation, Mr. Gomez Dzul Did Not, and**
23 **Could Not, Voluntarily and Intelligently Waive his *Miranda* Rights.**

24 A person may waive their *Miranda* rights, “provided the waiver is made
25 voluntarily, knowingly, and intelligently.” *Miranda*, 384 U.S. at 444. “[U]nless and
26 until such warnings and waiver are demonstrated by the prosecution at trial, no
27 evidence obtained as a result of interrogation can be used against him.” *Id.*; see also
28

1 *Withrow v. Williams*, 507 U.S. 680, 690 (1993) (*Miranda* requires the prosecution to
2 “demonstrate the warnings and waiver as threshold matters”).

3 The Supreme Court has explained that “[t]he inquiry” into the validity of the
4 waiver “has two distinct dimensions.” *Id.*

5 First, the relinquishment of the right must have been voluntary
6 in the sense that it was the product of a free and deliberate
7 choice rather than intimidation, coercion, or deception.
8 Second, the waiver must have been made with a full awareness
9 of both the nature of the right being abandoned and the
10 consequences of the decision to abandon it. Only if the “totality
11 of the circumstances surrounding the interrogation” reveal both
12 an uncoerced choice and the requisite level of comprehension
13 may a court properly conclude that the *Miranda* rights have
14 been waived.

15 *Moran v. Burbine*, 475 U.S. 412 (1986) (quoting *Fare v. Michael C.*, 442
16 U.S. 707, 725 (1979)).

17 To find a *Miranda* waiver knowing and intelligent, the Court may consider
18 several factors: (1) the defendant’s mental capacity; (2) whether the defendant signed a
19 written waiver; (3) whether the defendant was advised in his native tongue or had a
20 translator; (4) whether the defendant appeared to understand his rights; (5) whether the
21 defendant’s rights were individually and repeatedly explained to him; and (6) whether
22 the defendant had prior experience with the criminal justice system. *United States v.*
23 *Crews*, 502 F.3d 1130, 1140 (9th Cir. 2007) (citing *United States v. Garibay*, 143 F.3d
24 534, 537–39 (9th Cir. 1998)).

25 Here, Mr. Gomez Dzul gave no lawful *Miranda* waiver and his subsequent
26 statements must be suppressed. At the beginning of his interrogation, the Border
27 Agents, present without any neutral interpreter, read the *Miranda* warnings to Mr.
28 Gomez Dzul quickly in Spanish. (Bogen Decl. Exs. B, C.). When they asked him if he

1 understood his rights, he initially said no. (*Id.*) Then, when they asked him if he wanted
2 to give up his rights to speak to them, he expressed confusion. (*Id.*) Almost
3 immediately after that, Border Agent Gonzalez aggressively asked, “do you want to
4 talk to me right now or not?” and Mr. Gomez Dzul agreed, without understanding what
5 protections he was giving up. (*Id.*)

6 Looking to the Ninth Circuit factors outlined in *Crews*, 502 F.3d 1130, Mr.
7 Gomez Dzul’s mental capacity was likely limited at the time he agreed to speak with
8 the Border Agents - he had been in custody for hours based on nothing and was
9 exhausted and confused. He did not sign a written waiver of rights. He was not
10 provided a neutral interpreter; to the contrary, the “interpreter” was an active member
11 of the ongoing criminal investigation. He did not appear to understand his rights based
12 on his answers and his facial expressions. The rights were not repeatedly explained to
13 him, and he had limited prior interactions with law enforcement, almost ten years
14 before this. (Bogen Decl. ¶ 2.) Weighing all of the *Crews* factors, it is obvious that his
15 waiver was not voluntary, knowing, or intelligent.

16 The Border Agent’s question regarding waiver (“do you want to speak to me
17 right now or not?”) was deceptive and misleading. It provided no indication that Mr.
18 Gomez Dzul knew that by speaking to them he was giving up any Fifth Amendment
19 rights or the consequences of doing so. Border Agent Gonzalez also asked him this
20 question after he had been in custody for hours, wrongfully detained, without the
21 opportunity to speak to an attorney or anyone who was not law enforcement. The
22 “waiver” was coerced and was not the product of “free and deliberate choice.”
23 *Burbine*, 475 U.S. 412.

24 Perhaps the most instructive point is Mr. Gomez Dzul’s actions later in the day
25 during the second interview, when he was Mirandized orally and in writing. (Bogen
26 Decl. Ex. E.) He immediately invoked his right to counsel. (*Id.*) This is perhaps the best
27 indication that the *Miranda* warnings during the first interrogation were insufficient,
28

1 and as a result he did not understand the rights he had or the rights he would be giving
2 up by agreeing to speak to the Border Agents.

3 Based on his facial expressions, the speed of the questioning, the lack of a
4 Spanish interpreter who was truly neutral, and the ambiguous phrasing asking him to
5 give up his rights, it cannot be said that his waiver was voluntary, knowing, and
6 intelligent. All post-arrest evidence, including statements made during his video-
7 recorded interview, must be suppressed.

8 **IV. CONCLUSION**

9 Mr. Gomez Dzul was profiled, harassed, chased, wrongfully arrested, and
10 interrogated without validly waiving any rights against self-crimination or to counsel.
11 The Border Agents in this case violated his Fourth and Fifth Amendment rights so
12 severely that they taint all evidence collected after his initial arrest. The Court should
13 grant his Motion and suppress all evidence collected after Mr. Gomez Dzul was placed
14 in the Border Agents' vehicle.

15 Respectfully submitted,

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